

ROS.25698

**IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION**

**TERESA LAMBERT,
Plaintiff,**

V.

**ROSS DRESS FOR LESS, INC. D/B/A
ROSS DRESS FOR LESS #491 AND
ROSS STORES, INC.,
Defendants.**

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CIVIL ACTION NO. _____

DEFENDANTS' NOTICE OF REMOVAL

Defendants **ROSS DRESS FOR LESS, INC.** (incorrectly named and sued as “**ROSS DRESS FOR LESS, INC. D/B/A ROSS DRESS FOR LESS #491**”) and **ROSS STORES, INC.** (“Ross” or “Defendants”), pursuant to 28 U.S.C. §§ 1332, 1441, and 1446(a), file this Notice of Removal.

I. INTRODUCTION

1. This removal is based on diversity jurisdiction. Plaintiff Teresa Lambert (“Plaintiff”) has sued Ross for negligence/premises liability and resulting personal injury damages arising from an incident that allegedly occurred on February 1, 2019, at a store located in Frisco, Collin County, Texas. (Exh. B-2).

2. Plaintiff is now, and was at the time of removal and at the time of the filing of the lawsuit, an individual resident and citizen of the State of Texas.

3. In contrast, Defendants are now, and were at the time of removal and at the time of the filing of the lawsuit, corporations incorporated under the laws of the States of Delaware and Virginia, with their principal places of business, including their corporate headquarters, in the State of California. Defendants are now, and were at the time this action commenced, citizens of the

State of California and of no other state.

4. In addition, the amount in controversy exceeds \$75,000.00, exclusive of interest and costs. In particular, Plaintiff's Original Petition seeks monetary relief of over \$250,000.

5. Defendants timely file this Notice of Removal within 30 days of service of Plaintiff's Original Petition. This action has been on file for less than one year.

II. GROUNDS FOR REMOVAL: DIVERSITY JURISDICTION

A. Diversity Jurisdiction Exists

6. Removal is proper because this lawsuit involves a controversy between citizens of different states.

7. Plaintiff is a citizen of Texas. Westlaw records show that Plaintiff is 57 years of age. Her present address is a multi-family residential building located in Dallas, Dallas County, Texas, which she has maintained as her address since 2014. Records further show Plaintiff has previously resided at single-family and multi-family residential buildings in Collin, Dallas, and Denton Counties in Texas since approximately 1992. All phone records for Plaintiff identify only the area codes 214, 940, and 972 in Texas. No records suggest that Plaintiff has lived any place other than the State of Texas since 1992. Further, in 2001 Plaintiff filed for voluntary Chapter 13 bankruptcy in the U.S. Bankruptcy Court for the Northern District of Texas, Dallas Division.

8. Defendant Ross Dress for Less, Inc. is a Virginia corporation with its principal place of business at Pleasanton, California. Ross Stores, Inc. is a Delaware corporation with its principal place of business at Dublin, California.

9. In addition, the amount in controversy exceeds \$75,000.00, exclusive of interest and costs. 28 U.S.C. §§ 1332, 1441. Specifically, Plaintiff seeks between \$250,000.00 and \$1,000,000.00 in this lawsuit. (Exh. B-2); *Wright v. Spindletop Films, L.L.C.*, 845 F. Supp. 2d 783, 787 (S.D. Tex. 2012) ("Courts are to 'decide what the amount in controversy is from the complaint

itself ...”) (citing *Horton v. Liberty Mut. Ins. Co.*, 367 U.S. 348, 353 (1961) (“The general federal rule has long been to decide what the amount in controversy is from the complaint itself ...”); *Trans-Net, Inc. v. Crawley*, 2008 WL 938374, *1 (S.D. Tex. 2008) (“In this case, [plaintiff] avers actual damages in excess of the jurisdictional minimum. [Plaintiff’s] assertions are sufficient to support diversity jurisdiction.”). Accordingly, the amount in controversy exceeds \$75,000.00, exclusive of interest and costs.

B. Removal Is Timely

10. Plaintiff filed suit on February 1, 2021. Defendants were served with suit papers on February 3, 2021. (Exh. B-3). Defendants have filed their Answer in state court. (Exh. B-5). Defendants timely file this Notice of Removal within 30 days from the date of service of Plaintiff’s Original Petition. In addition, the suit has been pending for less than a year. Therefore, removal of this action is timely.

III. COMPLIANCE WITH REMOVAL PROCEDURES

11. Attached to Defendants’ Notice of Removal are the following documents required by 28 U.S.C. § 1446(a) and E.D. TEX. LOC. R. 81 (these documents are hereby incorporated by reference in all respects):

- A. Civil Cover Sheet;
- B. Defendant’s Index of Documents:
 - 1. State Court Docket Sheet;
 - 2. Plaintiff’s Original Petition, filed February 1, 2021;
 - 3. Citation on Ross Dress for Less, Inc., issued February 1, 2021, and returned February 3, 2021;
 - 4. Citation on Ross Stores, Inc., issued February 1, 2021, and returned February 3, 2021; and
 - 5. Defendants’ Original Answer, filed March 1, 2021.

C. Defendants' Certificate of Interested Parties.

12. Venue is proper in this district pursuant to 28 U.S.C. § 1441(a) because the United States District Court for the Eastern District of Texas, Sherman Division, embraces Collin County, Texas, where the state court action was filed and is currently pending. Specifically, Plaintiff filed suit in the 380th Judicial District Court in Collin County, Cause No. 380-00553-2021.

13. Defendant will immediately file a copy of its Notice of Removal with the clerk of the state court in which the state court action is pending.

14. In the event that Plaintiff seeks to remand this case, or the Court considers remand *sua sponte*, Defendants respectfully request the opportunity to submit such additional argument or evidence in support of removal as may be necessary.

15. Defendants have requested a trial by jury.

WHEREFORE, PREMISES CONSIDERED, Defendants request this action be immediately and entirely removed upon filing of this Notice of Removal to the United States District Court for the Eastern District of Texas, Sherman Division, and for such other and further relief to which they may be justly entitled.

Respectfully submitted,

**FLETCHER, FARLEY
SHIPMAN & SALINAS, LLP**

/s/ Fernando P. Arias

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ATTORNEY FOR DEFENDANTS

CERTIFICATE OF SERVICE

I hereby certify that the foregoing instrument was electronically filed via the Court's CM/ECF system and a true and correct copy of same was delivered to all counsel of record in accordance with the FEDERAL RULES OF CIVIL PROCEDURE on this the 5th day of March, 2021.

/s/ Fernando P. Arias
FERNANDO P. ARIAS